UNITED STATES
v.
ALBERT J. WELLS

IBLA 82-83 Decided January 3, 1983

Appeal from decision of Administrative Law Judge Robert W. Mesch, declaring lode mining claim null and void. I-15525.

Affirmed.

1. Mining Claims: Discovery: Generally

Isolated showings of high gold and silver values are not sufficient by themselves to establish the discovery of a valuable mineral deposit.

APPEARANCES: Royce B. Lee, Esq., Idaho Falls, Idaho, for appellant; Erol R. Benson, Esq., Office of General Counsel, U.S. Department of Agriculture, Ogden, Utah, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Albert J. Wells has appealed from a decision of Administrative Law Judge Robert W. Mesch, dated September 29, 1981, declaring the Hungry lode mining claim null and void for lack of discovery of a valuable mineral deposit.

On November 25, 1980, the Bureau of Land Management, on behalf of the Forest Service, U.S. Department of Agriculture, filed a contest complaint against appellant's mining claim, charging in part: "a. There are not presently disclosed within the boundaries of the lode mining claim, materials in place of a variety subject to the mining laws, sufficient in quality, quantity, and value to constitute a discovery." Appellant filed a timely answer and a hearing was held before Judge Mesch on July 9, 1981, in Salmon, Idaho.

Because we are in substantial agreement with the decision of the Administrative Law Judge, we set forth his analysis of the testimony elicited at the hearing.

The contestee located the Hungry Lode mining claim in 1953. The claim is situated on picturesque land within the Salmon National Forest. The claim was allegedly located for gold and silver and any other minerals that might be found. At the time of location, there was an adit about 20 feet deep on the claim. The adit had apparently been abandoned by an early prospector. Shortly after its location, the contestee constructed a cabin on the claim. Over the ensuing 28 years, the contestee lengthened the adit by about 10 feet. The contestee has not produced any minerals from the claim, and there is no indication that prior to the initiation of the contest proceedings he even took samples for assaying. The history of the claim certainly belies the fact that a valuable mineral deposit had been found and, as a result, the claim was valuable for mining purposes.

The contestant presented the testimony of three geologists who, based upon their examination of the claim and the assay results of sampling, expressed the opinions that the mineralization found within the claim was not such as to warrant a prudent person in the expenditure of his labor and means with a reasonable prospect of success in developing a paying mine. They arrived at their opinions because the value of the mineralization was not sufficient to meet the costs of a mining operation. They took one sample from the face of the adit and two samples from other locations in the adit. Two of the samples were assayed for gold and silver. One of the samples showed no gold or silver values. The other sample showed no gold value and 0.1 ounces of silver per ton of material. The silver value would amount to about 85 cents per ton for each ton of rock that was mined and processed. The third sample was assayed for gold, silver, lead, zinc, cobalt and barium. The sample showed no gold, silver, lead or barium values and insignificant values for zinc and cobalt.

I find that the contestant presented a prima facie case in support of the allegation that the mining claim is invalid because a valuable mineral deposit has not been found within the limits of the claim.

The contestee presented the testimony of a mining engineer who, based upon his examination of the claim and the assay results of sampling, expressed the opinion "that a prudent man would do additional work in proving up the values showing" (Tr. 94). He further testified:

> THE COURT: What would be the first thing you would recommend should be done with the mining claim if someone was going to go in there and spend some time and money?
>
> THE WITNESS: Well, further exploration work.

> THE COURT: To do what?
>
> THE WITNESS: To determine the size of ore body and the additional information on the values, the deposit, and the values of the deposit which is normally what you do before you put in a production or go any further whether you do it by cross-cutting or whether you do it by drilling. (Tr. 99, 100)

The contestee's witness took one sample from the face of the adit and one sample from an open cut on the surface of the claim. The samples showed gold values of 0.2 and 0.2 ounces per ton, silver values of 4.1 and 6.7 ounces per ton, and significant values for copper and lead. With the price of gold in excess of $400.00 an ounce and the price of silver in excess of $8.00 an ounce, this would mean that the sampled material had a value in excess of $130.00 per ton. With values of this magnitude, it is difficult to understand why the claim, at least in recent years, has not been the subject of extensive exploration activity in an attempt to ascertain whether the mineral values exist in sufficient quantity to warrant a mining operation.

The contestee's witness testified that he had no idea how his samples were assayed or analyzed; that he has never checked the accuracy of the company's work; and that he originally asked for an assay of four or five minerals and they said "you might as well go for the total because it's only a few dollars more" (Tr. 97). I believe the assay obtained by the contestant's witnesses are more reliable and trustworthy than the assay results obtained by the contestee's witness. I accept the sampling done, the assay results obtained, and the opinions expressed by the contestant's three geologists over the work done, the assay results obtained, and the opinion expressed by the contestee's mining engineer.

In any event, even if I accepted the assay results and opinion testimony of the contestee's witness, I could not conclude that the mining claim has been perfected by the discovery of a valuable mineral deposit. Without some information relating to the amount of mineralization that might be available for extraction, no one could conclude that a mineral deposit has been found that is valuable for mining purposes. At best, the contestee's evidence simply shows that the claim might warrant further exploration in an effort to ascertain whether a valuable mineral deposit might be found. This is not sufficient to meet the requirements of the mining law.

(Decision at 2-4).

In his statement of reasons for appeal, appellant concedes that the Government established a prima facie case of invalidity, based on the testimony of the Government mineral examiners, but contends that he overcame that case by a preponderance of the evidence. Appellant relies on the high gold and silver values as indicated by the assay results of two samples taken by Frank A. Taft, a consulting mining engineer (Exh. F). Appellant notes that these samples were taken approximately 300 feet apart and concludes that the "finding of such a high value of gold and silver over such a wide area would constitute a finding of a valuable mineral deposit" (Statement of Reasons at 2).

[1] However, even were we to accept the assay results at their face value, those assay results alone do not establish the existence of a valuable mineral deposit. A valuable mineral deposit exists only where a mineral is present in such quality and quantity that a prudent person would be justified in the further expenditure of his labor and means with a reasonable prospect of success in developing a valuable mine. We have long held that isolated showings of high mineral values are not sufficient by themselves to establish the discovery of a valuable mineral deposit. United States v. Kingdon, 36 IBLA 11 (1978); United States v. Vaux, 24 IBLA 289 (1976).

Appellant maintains on appeal that he has shown high gold and silver values to be present "over * * * a wide area." We disagree. Appellant's two samples came from the face of the adit and from the surface of his mining claim, approximately 300 feet southwest of the adit (Tr. 92). Appellant, however, introduced no evidence which in any way connects the mineral values present at these discrete sample points. Indeed, there is no evidence that they are part of a continuous mineralization along the course of a vein or lode such that the quantity of ore could be determined by geologic inference. See United States v. Whitney, 51 IBLA 73, 85 (1980). Accordingly, we have been shown no reason that they should not be considered merely as isolated showings. We conclude that Judge Mesch was correct in holding that appellant did not overcome the Government's case by a preponderance of the evidence.

Finally, appellant argues that he has been denied due process and the equal protection of the law because he was "the only mining claim owner who was challenged, among thousands of mining claims within a five mile radius" (Statement of Reasons at 3). Appellant contends that he was singled out because there is a cabin on his claim. As we stated in United States v. Whitney, supra at 87:

> This argument is without merit. The motivation of the Government agency in initiating a contest against a mining claim is irrelevant. The Board of Land Appeals cannot abnegate its responsibility to determine the validity of a mining claim when that issue is presented upon appeal, and where that issue is so presented, mining claims properly are declared null and void upon a showing of lack of discovery of a valuable mineral deposit upon the claim.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Gail M. Frazier
Administrative Judge